TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 237

LUTHER WEEDIN, COMMISSIONER OF IMMIGRATION AT THE PORT OF SEATTLE, WASHINGTON, PETITIONER

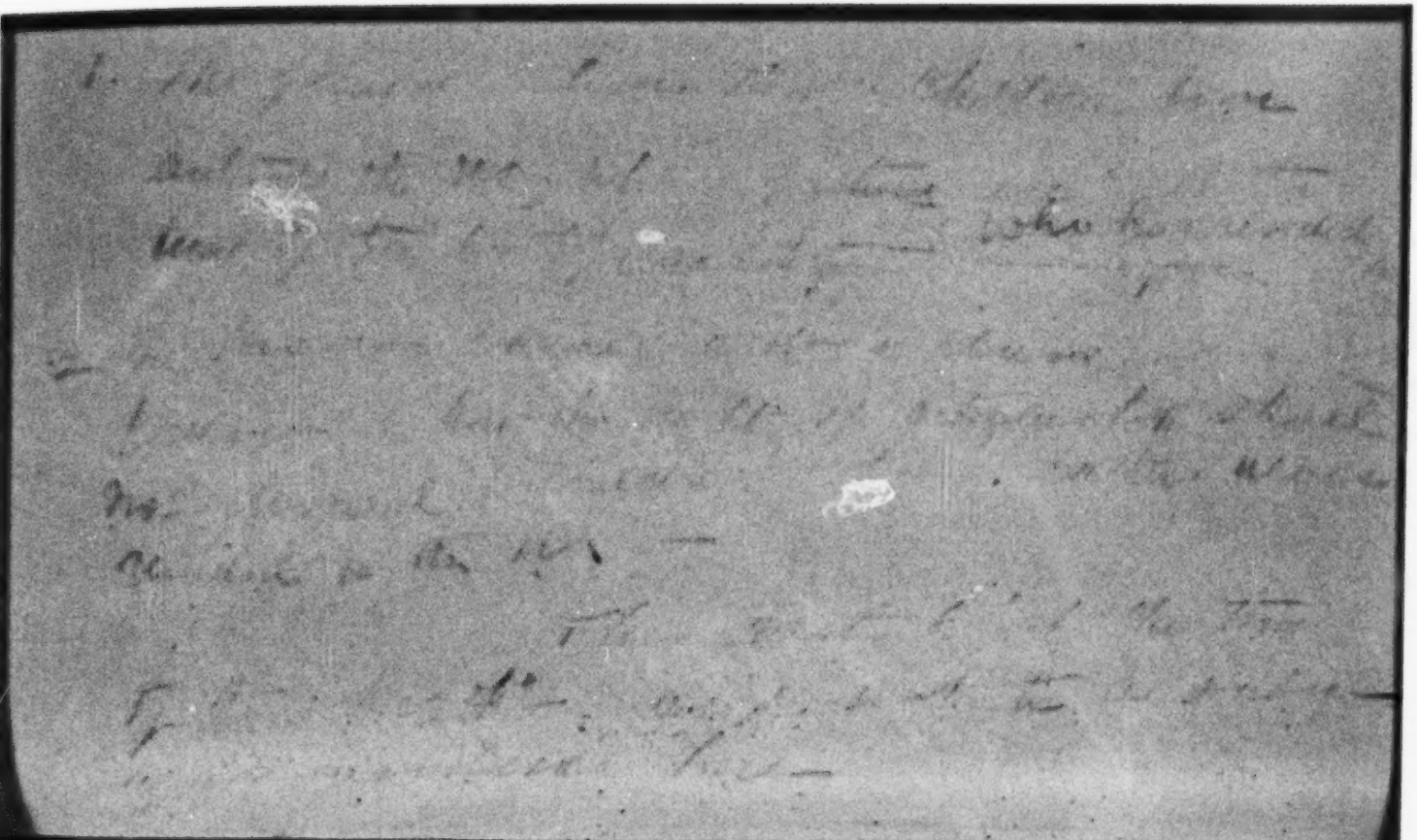
vs.

CHIN BOW

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 30, 1926
CERTIORARI GRANTED DECEMBER 7, 1926

(31514)



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 237

LUTHER WEEDIN, COMMISSIONER OF IMMIGRATION AT THE PORT OF SEATTLE, WASHINGTON, PETITIONER

vs.

CHIN BOW

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Record from D. C. U. S., Western Washington	1
Petition for writ of habeas corpus	1
Order to show cause	3
Return to writ of habeas corpus	6
Order granting writ of habeas corpus	9
Writ of habeas corpus and marshal's return	11
Return to writ	13
Judgment	14
Notice of appeal	16
Petition for appeal	17
Assignments of error	18
Order allowing appeal	20
Stipulation for transmission of record	21
Order for transmission of record	22
Praecipe for transcript of record	23
Clerk's certificate	24
Citation and service	26
Proceedings in U. S. C. C. A., Ninth Circuit	29
Argument and submission	29
Orders granting leave to file brief amicus curiæ	30
Order filing opinion and judgment	30
Opinion, Rudkin, J.	31
Decree	32
Order staying mandate	32
Clerk's certificate	33
Order allowing certiorari	35

NAMES AND ADDRESSES OF COUNSEL.

THOMAS P. REVELLE, Esq., 310 Federal Building, Seattle, Washington,
Attorney for Appellant.

DONALD G. GRAHAM, Esq., 310 Federal Building, Seattle, Washington,
Attorney for Appellant.

HENRY A. MONROE, Esq., 952 Empire Building, Seattle, Washington,
Attorney for Appellee.

A. WARNER PARKER, Esq.,
Attorney for Appellee. [1*]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW for a Writ of Habeas Corpus.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable the District Court of the United States for the Western District of Washington, Northern Division:

The petition of Chin Bow, respectfully shows to this Court:

*Page number appearing at foot of page of original certified Transcript of Record

That said Chin Bow is confined and restrained of his liberty at the immigration station in the city of Seattle, State of Washington, by Luther Weedin, United States Commissioner of Immigration under and by virtue of an order of deportation issued by the Hon. James J. Davis, Secretary of Labor of the United States, which order of deportation directs that petitioner be deported to the Republic of China. That said order of deportation was and is void and contrary to law, and this petitioner is illegally confined and restrained of his liberty thereunder for the following reasons:

I.

That petitioner is of the age of nine years and was born in the Republic of China. That petitioner's father, Chin Dun, is a native born citizen of the United States of America, and this petitioner, therefore, is likewise a citizen of the United States of America under the laws thereof.

II.

That on or about the 9th day of July, 1924, this petitioner arrived at the port of Seattle, Washington, en route from the Republic of China, and was then and there and ever since has been held and detained by the said Immigration Commissioner. That after inquiry and examination before said Commissioner of Immigration petitioner was denied admission to the United States by said Commissioner from which decision petitioner [2] appealed to the Secretary of Labor of the United States, which appeal was dismissed and petitioner ordered to be deported to the Republic of China.

III.

That the evidence taken before the Board of Special Inquiry in the matter of the application of petitioner to land in the United States shows that petitioner is a citizen of the United States, and there was no evidence taken before said board that petitioner was not a citizen of the United States. That the order denying petitioner admission to the United States and the said order of deportation to China, was and is contrary to the law and the evidence.

WHEREFORE, petitioner prays that this Honorable Court order that a writ of habeas corpus issue from this court directed to the said Luther Weedin, Commissioner of Immigration, Seattle, Washington, commanding him forthwith to produce the body of petitioner before this Court then and there to inquire into the legality of his detention, or in the alternative that this Court issue its order commanding the said Commissioner of Immigration to show cause at a time and place to be fixed by the Court, why said writ of habeas corpus should not issue.

And the petitioner be restored to his liberty.

HENRY A. MONROE,
A. WARREN PARKER,
Attorneys for Petitioner.

State of Washington,
County of King,—ss.

Chin Bow, being first duly sworn, on oath deposes and says: That he is the petitioner named in the foregoing petition for a writ of habeas corpus;

that he has read the said petition, knows the contents thereof and believes the same to be true.

(Chinese Signature.)

Subscribed and sworn to before me this 3d day of November, 1924.

[Seal] J. P. SANDERSON,
Notary Public.

Received office of U. S. Attorney, Nov. 3, 1924.
THOS. P. REVELLE.
NM.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [3]

In the United States District Court for the Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW for a Writ of Habeas Corpus.

ORDER TO SHOW CAUSE.

This matter coming on regularly to be heard upon the motion of Henry A. Monroe, attorney for the petitioner, Chin Bow, for an order directed to Luther Weedin, United States Commissioner of Immigration, Seattle, Washington, commanding him, the said Commissioner of Immigration to show cause, if any he have, why a writ of habeas corpus

should not issue out of this court commanding him to have the body of Chin Bow before this Court then and there to inquire into the legality of his detention by said commissioner, and it appearing from the petition of the said Chin Bow that he is illegally and unlawfully detained and restrained of his liberty by the said Commissioner of Immigration at the immigration station in the city of Seattle, State of Washington, and the law and premises being by the Court duly considered, it is

ORDERED AND ADJUDGED that the above-named Luther Weedin, United States Commissioner of Immigration, Seattle, Washington, show cause, if any he have, before this Court on the 10 day of November, 1924, at ten o'clock in the forenoon of said day, why a writ of habeas corpus should not issue from this court commanding him the said Luther Weedin, commissioner as aforesaid, to produce the body of the said Chin Bow before this Court at a time and place to be fixed by the Court, then and there to inquire into the legality of his caption and detention.

Done in open court this 3 day of November, 1924.

JEREMIAH NETERER,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [4]

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Wash.,—ss.

I hereby certify and return that I served the annexed order to show cause on the therein-named Luther Weedin, by handing to and leaving a true and correct copy thereof with him personally, at Seattle, in said District on the 3d day of Nov., A. D. 1924.

E. B. BENN,
U. S. Marshal.
By A. M. Smith,
Deputy.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [5]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW, for a Writ of Habeas Corpus.

RETURN TO WRIT OF HABEAS CORPUS.

To the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington:

I, Luther Weedin, to whom the annexed writ of

habeas corpus is directed, have now here before the court, the body of Chin Bow, as therein commanded, and I hereby certify that I am United States Commissioner of Immigration at Seattle, Washington, that the said petitioner is now detained and excluded from the United States by this respondent, as an alien person not entitled to admission under the laws of the United States, to wit, as an immigrant and alien, ineligible to citizenship and excluded under the provisions of Section 13, Subdivision (c), of the Act of Congress of May 26, 1924, known as the Immigration Act of 1924; that the said petitioner was detained by this respondent at the time he arrived in the United States, to wit, the 9th day of July, 1924, as an alien person, not entitled to admission under the laws of the United States, and subject to exclusion and deportation under the laws of the United States, pending a decision of his application for admission to the United States as being the minor son of American citizen of Chinese nationality, lawfully domiciled in the United States; that at a hearing before the Board of Special Inquiry, the said petitioner was denied admission by the said [6] Board of Special Inquiry because said petitioner's status as a minor son of an American citizen had not been proved and on the further ground that petitioner was inadmissible to the United States under Subdivision C of Section 13 of the Immigration Act of 1924 and his application for admission to the United States was denied; that the said petitioner appealed from the decision of the Board of Special Inquiry to the Secretary

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Wash.,—ss.

I hereby certify and return that I served the annexed order to show cause on the therein-named Luther Weedin, by handing to and leaving a true and correct copy thereof with him personally, at Seattle, in said District on the 3d day of Nov., A. D. 1924.

E. B. BENN,
U. S. Marshal.
By A. M. Smith,
Deputy.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [5]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW, for a Writ of Habeas Corpus.

RETURN TO WRIT OF HABEAS CORPUS.

To the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington:

I, Luther Weedin, to whom the annexed writ of

habeas corpus is directed, have now here before the court, the body of Chin Bow, as therein commanded, and I hereby certify that I am United States Commissioner of Immigration at Seattle, Washington, that the said petitioner is now detained and excluded from the United States by this respondent, as an alien person not entitled to admission under the laws of the United States, to wit, as an immigrant and alien, ineligible to citizenship and excluded under the provisions of Section 13, Subdivision (c), of the Act of Congress of May 26, 1924, known as the Immigration Act of 1924; that the said petitioner was detained by this respondent at the time he arrived in the United States, to wit, the 9th day of July, 1924, as an alien person, not entitled to admission under the laws of the United States, and subject to exclusion and deportation under the laws of the United States, pending a decision of his application for admission to the United States as being the minor son of American citizen of Chinese nationality, lawfully domiciled in the United States; that at a hearing before the Board of Special Inquiry, the said petitioner was denied admission by the said [6] Board of Special Inquiry because said petitioner's status as a minor son of an American citizen had not been proved and on the further ground that petitioner was inadmissible to the United States under Subdivision C of Section 13 of the Immigration Act of 1924 and his application for admission to the United States was denied; that the said petitioner appealed from the decision of the Board of Special Inquiry to the Secretary

of Labor and thereafter the decision of the Board of Special Inquiry was affirmed by the Secretary of Labor and the Commission of Immigration's Board of Review as to exclusion under the Immigration Act of 1924, but reversed as to exclusion upon failure of proof as to the aforementioned status; that since the final decision of the Special Board of Review, respondent has and now holds and detains said petitioner for exclusion and deportation from the United States, as an alien person not entitled to admission under the laws of the United States, and subject to exclusion and deportation under the laws of the United States.

That the original records of the Department of Labor, Bureau of Immigration, both on the hearing before the Board of Special Inquiry at Seattle, Washington, and on the submission of the records to the Commissioner of Labor at Washington, D. C., in the matter of the application of said petitioner for admission to the United States, are hereto attached, and made a part and parcel of this return as fully and completely as though set forth herein in full.

WHEREFORE, respondent prays that the petition for writ of habeas corpus be denied.

LUTHER WEEDIN,
Commissioner of Immigration. [7]

United States of America,
Western District of Washington,
Northern Division,—ss.

Luther Weedin, being first duly sworn, on oath deposes and says: That he is United States Commis-

sioner of Immigration at Seattle, named in the foregoing return; that he has read said return, knows the contents thereof and believes the same to be true.

LUTHER WEEDIN.

Subscribed and sworn to before me this 19th day of November, 1924.

[Seal] EDITH M. REGAN,
Notary Public in and for the State of Washington, Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 20, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [8]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW for a Writ of Habeas Corpus.

ORDER GRANTING WRIT OF HABEAS CORPUS.

THIS CAUSE coming duly and regularly on for hearing on December 1, 1924, on the order heretofore issued herein to show cause why the writ of habeas corpus should not issue and the return of the Commissioner of Immigration thereto, A. Warner Parker, Henry A. Monroe, Fred H. Lysons and

Charles S. Gleason appearing on behalf of the petitioner, and Donald G. Graham, Assistant United States Attorney appearing on behalf of the United States Immigration Service, said cause having been argued and submitted to the Court and the Court being now fully advised in the premises, and it appearing to the Court that said writ should issue;

It is by the Court ORDERED that a writ of habeas corpus issue herein out of and under the seal of this court, directed to the Honorable Luther Weedin as Commissioner of Immigration at the Port of Seattle, commanding him to have the body of the said Chin Bow before me in the courtroom of said court on December 4, 1924, at the hour of two o'clock in the afternoon of said day, to do and receive what shall then and there be considered concerning the said Chin Bow, together with the time and cause of his detention, and that he have then and there the said writ.

Done in open court this 3d day of December, 1924.

JEREMIAH NETERER,
Judge.

O. K. as to form.

DONALD G. GRAHAM,
Asst. U. S. Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 3, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [9]

United States District Court, Western District of Washington.

No. 8972.

WRIT OF HABEAS CORPUS.

The President of the United States of America: To LUTHER WEEDIN, Commissioner of Immigration, Seattle, Washington, GREETING:

WE COMMAND YOU, that you have the body of Chin Bow, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name said Chin Bow shall be called or charged, before the Honorable JEREMIAH NETERER, United States District Judge for the Western District of Washington, at its courtroom in the City of Seattle, in the Northern Division of said Western District of Washington, on the 4th day of December, A. D. 1924, at 2 o'clock in the afternoon, to do and receive what shall then and there be considered concerning him the said Chin Bow.

And have you then and there this writ.

WITNESS the Hon. JEREMIAH NETERER, Judge of the United States District Court for the Western District of Washington this 3d day of De-

cember, in the year of our Lord one thousand nine hundred and twenty-four.

[Seal] F. M. HARSHBERGER,
Clerk.
By S. M. H. Cook,
Deputy Clerk.

Fred H. Lysons.

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Wash.,—ss.

I hereby certify and return that I have served the annexed writ of habeas corpus on the therein-named Luther Weedin by handing to and leaving a true and correct copy thereof with him personally at Seattle, Wash., in said District on the 3d day of Dec., A. D. 1924.

E. B. BENN,
U. S. Marshal.
By Joseph Knizek,
Deputy.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Dec. 4, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [10]

United States District Court, Western District of Washington, Northern Division.

No 8972.

In the Matter of the Application of CHIN BOW for a Writ of Habeas Corpus.

RETURN TO WRIT.

To the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington.

Comes now Luther Weedin, United States Commissioner of Immigration at Seattle, Washington, and for return to the Writ of Habeas Corpus heretofore served upon him, herewith produces the body of Chin Bow in court, and shows and certifies to this Court that the statement of facts in the return to the order to show cause, heretofore filed herein is true and correct, and by reference thereto is made a part of this return the same as though set forth in full.

WHEREFORE, having made a full and complete return and certificate as to the manner and authority by which the said Chin Bow is held, Luther Weedin, United States Commissioner of Immigration, who makes this return, prays this Court for an order quashing the writ of habeas corpus heretofore entered.

LUTHER WEEDIN,
Commissioner of Immigration.

United States of America,
Western District of Washington,
Northern Division,—ss.

Luther Weedin, being first duly sworn, on oath deposes and says: That he is United States Commissioner of Immigration at Seattle, Washington; that he has read the foregoing return; knows the contents thereof, and believes the same to be true.

LUTHER WEEDIN.

Subscribed and sworn to before me this 3d day of December, 1924.

[Seal] EDITH M. REGAN,
Notary Public in and for the State of Washington, Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 4, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [11]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 8672.

In the Matter of the Application of CHIN BOW, for a Writ of Habeas Corpus.

ORDER OF DISCHARGE.

The Court having heretofore and on December 3, 1924, made and entered its order directing that writ

of habeas corpus issue herein, directed to the Honorable Luther Weedin as Commissioner of Immigration at the Port of Seattle, Washington, directing and requiring that he have the body of this petitioner, Chin Bow, before me on December 4, 1924, at the hour of two o'clock P. M., and he having made his return to said writ and having produced before me the body of the said petitioner to do and receive what should then and there be considered concerning the said Chin Bow, and it satisfactorily appearing to the Court that the said Chin Bow is entitled to his discharge:

Now, therefore, it is by the Court ORDERED, ADJUDGED AND DECREED that the petitioner, Chin Bow, be and he is hereby discharged; provided, that this order be and the same is hereby held in abeyance for the period of ten days from December 4, 1924, such period of time being given the Government within which to exercise its right of appeal herein, this order of discharge to become absolute and final upon the expiration of said ten days' period if no appeal shall have been taken by the Government within said period.

An exception is hereby allowed.

Done in open court this 4 day of December, 1924.

JEREMIAH NETERER,
Judge.

O. K. as to form.

DONALD G. GRAHAM,
Asst. U. S. Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Dec. 4, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [12]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW, for a Writ of Habeas Corpus.

NOTICE OF APPEAL.

To Chin Bow, and to Henry A. Monroe and A. Warren Parker, His Attorneys:

You and each of you, are hereby notified that Luther Weedin as United States Commissioner of Immigration at the Port of Seattle, respondent above named, hereby and now appeals from that certain order, judgment and decree made herein by the above-entitled court on the third day of December, 1924, adjudging, holding, finding and decreeing that the above-named petitioner for writ of habeas corpus, Chin Bow, be discharged from the custody of said United States Commissioner of Immigration and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

THOS. P. REVELLE,
United States Attorney for the Western District of Washington.

By DONALD G. GRAHAM,
Assistant United States Attorney.

Dec. 10, 1924.
Recd. copy.

HENRY A. MONROE,
Atty. for Petitioner.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 10, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [13]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW, for a Writ of Habeas Corpus.

PETITION FOR APPEAL.

Luther Weedin, United States Commissioner of Immigration at the Port of Seattle, the respondent above named, deeming himself aggrieved by the order and judgment entered herein on the third day of December, 1924, does hereby appeal from the said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that a transcript and record of proceedings and papers upon which said order and judgment is made, duly authenticated, may be sent to the United

States Circuit Court of Appeals for the Ninth Judicial District of the United States.

THOS. P. REVELLE,
United States Attorney for the Western District of Washington.

By DONALD G. GRAHAM,
Assistant United States Attorney,
Attorneys for Appellant.

Dec. 10, 1924.
Recd. copy.

HENRY A. MONROE,
Atty. for Petitioner.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 10, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [14]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW, for a Writ of Habeas Corpus.

ASSIGNMENTS OF ERROR.

I.

The Court erred in holding and deciding that the petitioner, Chin Bow, did not have a fair and impartial trial before the Inspector of Immigration conducting his hearing.

II.

The Court erred in holding and deciding that a writ of habeas corpus be awarded to the petitioner herein.

III.

The Court erred in holding, deciding and adjudging that the petitioner, Chin Bow, be discharged from the custody of Luther Weedin, as Commissioner of Immigration at the Port of Seattle, Washington.

IV.

The Court erred in deciding, holding and adjudging that the petitioner, Chin Bow, was not subject to exclusion and deportation, but was entitled to come in and remain in the United States.

THOS. P. REVELLE,
United States Attorney.
DONALD G. GRAHAM,
Assistant United States Attorney.

Dec. 10, 1924.

Recd. copy.

HENRY A. MONROE,
Atty. for Petitioner.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 10, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [15]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW, for a Writ of Habeas Corpus.

ORDER ALLOWING APPEAL AND FIXING BOND OF PETITIONER.

Now, to wit, on the 10th day of December, 1924, it is

ORDERED that the appeal be allowed as prayed for, and it is further

ORDERED that the petitioner for writ of habeas corpus may remain at large pending said appeal, upon executing a recognizance or bond to the United States of America to the satisfaction of the Clerk of the Court, in the sum of One Thousand no/100 ——— for the appearance of said petitioner to answer the judgment of the Circuit Court of Appeals, if the judgment of the District Court shall be reversed.

Done in open court this 10th day of December, 1924.

JEREMIAH NETERER,
United States District Judge.

O. K.—HENRY A. MONROE,
A. WARREN PARKER,
Attorneys for Petitioner.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Dec. 10, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [16]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW for a Writ of Habeas Corpus.

STIPULATION FOR TRANSMISSION OF ORIGINAL RECORD.

It is hereby stipulated by and between counsel for petitioner and for the Commissioner of Immigration, that the certified immigration file and records of the Department of Labor covering the exclusion proceedings of the petitioner which were filed with the return of the Commissioner of Immigration to the order to show cause, may be transmitted with the appellate record in this case, and may be considered by the Circuit Court of Appeals in lieu of a certified copy of said immigration files and records of the Department of Labor.

HENRY A. MONROE,
A. WARNER PARKER,
Attorneys for Petitioner.
THOS. P. REVELLE,
United States Attorney.
DONALD G. GRAHAM,
Assistant United States Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 10, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [17]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW for a Writ of Habeas Corpus.

ORDER FOR TRANSMISSION OF ORIGINAL RECORD.

Upon stipulation of counsel, it is by the Court ORDERED, and the Court does hereby ORDER, that the Clerk of the above-entitled court transmit with the appellate record in said cause the original file and record of the Department of Labor, covering the deportation proceedings against the petitioner, which was filed with the return of the Commissioner of Immigration to the order to show cause, directly to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, in order that the said original immigration file may be considered by the Circuit Court of Appeals in lieu of a certified copy of said record.

Done in open court this 10th day of December, 1924.

JEREMIAH NETERER,
United States District Judge.

Dec. 10, 1924.
Recd. copy.

HENRY A. MONROE,
Atty. for Petitioner.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 10, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW for a Writ of Habeas Corpus.

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL.

To the Clerk of the Above-entitled Court:

You will please prepare and duly authenticate the transcript and following portions of the record, in the above-entitled case for appeal of the said appellant, heretofore allowed, to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Petition for writ of habeas corpus.
2. Order to show cause.
4. Return to order to show cause.
5. Order granting writ of habeas corpus.
6. Writ of habeas corpus.
7. Order discharging petitioner.

8. Petition for appeal.
9. Notice of appeal.
10. Order allowing appeal and fixing bond of petitioner.
11. Assignments of error.
12. Citation.
13. Return to writ of habeas corpus.
14. Stipulation allowing original file and record of the Department of Labor to be sent to the Clerk of the Circuit Court as part of the Appellate Record.
15. Order for transmission of original file and record.
16. This praecipe.

THOS. P. REVELLE,
United States Attorney,
DONALD G. GRAHAM,
Assistant United States Attorney,
Attorneys for Appellant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 10, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [19]

In the United States District Court for the Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW for a Writ of Habeas Corpus.

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 19, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses and costs incurred in my office on behalf of the appellant, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [20]

Clerk's fees (Sec. 828 R. S. U. S.) for making record, certificate or return 43 folios at 15c $6.45

Certificate of Clerk to transcript of record, 4 folios at 15c ..... .60

Seal to said certificate ..... .20
Certificate of Clerk to original exhibits, 2 folios at 15c ..... .30
Seal to said certificate ..... .20

I hereby certify that the above cost for preparing and certifying record, amounting to $7.75, will be included as constructive charges against the United States in my quarterly account to the Government of fees and emoluments for the quarter ending December 31, 1924.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 18th day of December, 1924.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western District of Washington. [21]

United States District Court, Western District of Washington, Northern Division.

No. 8972.

In the Matter of the Application of CHIN BOW for a Writ of Habeas Corpus.

CITATION ON WRIT OF ERROR.

The United States of America,—ss.
To Chin Bow, GREETING:

WHEREAS, Luther Weedin, United States Commissioner of Immigration at the Port of Seattle, Washington, has lately appealed to the United

States Circuit Court of Appeals for the Ninth Circuit from the judgment, order and decree lately on, to wit, the third of December, 1924, rendered in the District Court of the United States for the Western District of Washington, made in favor of you, adjudging and decreeing that Chin Bow be discharged from the custody of said Luther Weedin as United States Commissioner of Immigration at the Port of Seattle, Washington, and setting him at large.

You are therefore CITED TO APPEAR before the United States Circuit Court of Appeals in the City of San Francisco, State of California, on the 9th day of January, 1925, next, to do and receive what may obtain to justice to be done in the premises.

GIVEN under my hand in the City of Seattle, in the Ninth Circuit, this 10th day of December, in the year of our Lord, nineteen hundred twenty-four, and the Independence of the United States the one hundred forty-eighth.

[Seal] JEREMIAH NETERER,
Judge, United States District Court, Western District of Washington.

Dec. 10, 1924.

Recd. copy.

HENRY A. MONROE,
Atty. for Petitioner. [22]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 10, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [23]

[Endorsed]: No. 4442. United States Circuit Court of Appeals for the Ninth Circuit. Luther Weedin, as Commissioner of Immigration at the Port of Seattle, Washington, Appellant, vs. Chin Bow, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed December 22, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 4442

LUTHER WEEDIN, AS COMMISSIONER OF IMMIGRATION AT THE PORT OF Seattle, Washington, appellant

vs.

CHIN BOW, APPELLEE

Upon appeal from the United States District Court for the Western District of Washington, Northern Division

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

At a stated term, to wit, the October term, A. D. 1924, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the tenth day of March, in the year of our Lord one thousand nine hundred and twenty-five.

Present: Honorable William B. Gilbert, senior circuit judge, presiding; Honorable William H. Hunt, circuit judge; Honorable Frank H. Rudkin, circuit judge.

Luther Weedin, as commissioner of immigration at the port of Seattle, Wash., appellant, *vs.* Chin Bow, appellee. No. 4442

ORDER OF SUBMISSION

Ordered appeal in above-entitled cause argued by Mr. Donald G. Graham, assistant United States attorney, counsel for the appellant, and by Mr. Henry A. Monroe, counsel for the appellee, and submitted to the court for consideration and decision.

At a stated term, to wit, the October term, A. D. 1924, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the fifth day of May, in the year of our Lord one thousand nine hundred and twenty-five.

Present: Honorable William B. Gilbert, senior circuit judge, presiding; Honorable William H. Hunt, circuit judge; Honorable Frank H. Rudkin, circuit judge.

Luther Weedin, as commissioner of immigration at the port of Seattle, Washington, appellant, vs. Chin Bow, appellee. No. 4442

ORDER ALLOWING FILING OF BRIEF AS AMICUS CURIAE

Pursuant to telegraphic application of Mr. Fred S. Lyons, and good cause therefor appearing, ordered leave granted said counsel to file a brief as amicus curiae in above cause within ten (10) days from date.

At a stated term, to wit, the October term, A. D. 1924, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the city and county of San Francisco, in the State of California, on Friday, the fifth day of June, in the year of our Lord one thousand nine hundred and twenty-five.

Present: Honorable William H. Hunt, circuit judge, presiding; Honorable Frank H. Rudkin, circuit judge; Honorable Wallace McCamant, circuit judge.

Luther Weedin, as Commissioner of Immigration at the Port of Seattle, Washington, appellant vs. Chin Bow, appellee. No. 4442

ORDER GRANTING LEAVE TO FILE BRIEF AS AMICUS CURIAE

Upon oral motion of Mr. George A. McGowan, and good cause therefor appearing, it is ordered that leave be, and hereby is, granted to Mr. McGowan to file a brief as amicus curiae in above cause within ten (10) days from date.

At a stated term, to wit, the October term, A. D. 1924, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the city and county of San Francisco, in the State of California, on Monday, the third day of August, in the year of our Lord one thousand nine hundred and twenty-five.

Present: Honorable William H. Hunt, circuit judge, presiding; Honorable William W. Morrow, circuit judge.

In the matter of the filing of certain opinions and of the filing and recording of certain judgments and decrees.

By direction of the Honorable William B. Gilbert, William H. Hunt, and Frank H. Rudkin, circuit judges, before whom the causes were heard, ordered that the typewritten opinion this day rendered by this court in each of the following-entitled causes be forthwith filed by the clerk, and that a judgment or decree be filed and recorded in the minutes of this court in each of the causes in accordance with the opinion filed therein:

* * * * * * *

Luther Weedin, as Commissioner of Immigration at the Port of Seattle, Washington, appellant, vs. Chin Bow, appellee. No. 4442

* * * * * * *

In the United States Circuit Court of Appeals for the Ninth Circuit

Luther Weedin, as Commissioner of Immigration at the Port of Seattle, Washington, appellant, *vs.* Chin Bow, appellee. No. 4442

Upon appeal from the United States District Court for the Western District of Washington, Northern Division.

Before Gilbert, Hunt, and Rudkin, circuit judges.

Rudkin, circuit judge. This is an appeal from an order allowing a writ of habeas corpus and granting a discharge. The appellee applied for admission to the United States as a citizen thereof, and as the minor son of a citizen. His claim of citizenship is based on section 1993 of the Revised Statutes, which provides:

"All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

The Government concedes that the appellee is the minor son of a citizen of the United States, but disputes his own claim to citizenship, for the reason that his father never resided in the United States prior to the birth of the appellee, although the father has since become a resident and is now residing here. The application of the limitation found in the above section of the Revised Statutes to the facts before the court is the only question presented for our consideration. The statute refers to the descent of the rights of citizenship. The term "descend" has a well-defined meaning in law. As defined by Webster, it means: "To pass down, as from generation to generation, or from ancestor to heir." If the term "descend" is given that meaning in this connection, the status of the appellee would not become definitely fixed until his father became a resident of the United States or died without becoming such. In the former event he would become vested with all the rights of citizenship as soon as his father became a resident, while in the latter event his claim to citizenship would be forever lost. So far as we are advised the limitation in question has never become the subject of judicial inquiry in a reported decision. The section was referred to incidentally in both the majority and dissenting opinions in *United States* v. *Wong Kim Ark*, 169 U. S. 649, although the direct question was not there involved. At page 691 the majority opinion quotes approvingly from an opinion of Secretary Fish to President Grant to the effect that section 1993 has conferred only a qualified citizenship upon the children of American fathers born without the jurisdiction of the United States, and has denied to them, what pertains to other American citizens, the right of transmitting citizenship to their children unless they shall have made themselves residents of the United States. In the dissenting opinion, the Chief Justice was more specific. At page 714 he said:

"Section 1993 of the Revised Statutes provides that children so born 'are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.' Thus a limitation is prescribed on the

passage of citizenship by descent beyond the second generation if then surrendered by permanent nonresidence, and this limitation was contained in all the acts from 1790 down."

Again, at page 722, he said:

"By section 1993 of the Revised Statutes, the citizenship of the children of our citizens born abroad may be terminated in that generation by their persistent abandonment of their country."

In accordance with these views it would seem that the rights of citizenship of the appellee would only terminate by the death of his father without having become a resident of the United States, and as the father became a resident of the United States during his lifetime and now resides here, the rights of his son as a citizen of the United States have become fixed and his right to enter the United States follows therefrom as a matter of course.

The order of the court below is therefore affirmed.

(Endorsed:) Opinion. Filed August 3, 1925. F. D. Monckton, clerk. By Paul P. O'Brien, deputy clerk.

United States Circuit Court of Appeals for the Ninth Circuit

Luther Weedin, as Commissioner of Immigration at the Port of Seattle, Washington, appellant, *vs.* Chin Bow, appellee. No. 4442

DECREE

Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the order of the said District Court in this cause be, and hereby is, affirmed.

(Endorsed:) Decree. Filed and entered August 3, 1925. F. D. Monckton, clerk. By Paul P. O'Brien, deputy clerk.

United States Circuit Court of Appeals for the Ninth Circuit

Luther Weedin, as commissioner of immigration at the port of Seattle, Washington, appellant, *vs.* Chin Bow, appellee. No. 4442

ORDER STAYING ISSUANCE OF MANDATE

Good cause therefor appearing, it is hereby ordered that the mandate in the above-entitled proceeding be stayed to and including the 5th day of October, 1925.

Dated: September 3, 1925.

W. H. Hunt,
United States Circuit Judge.

(Endorsed:) Order staying issuance of mandate. Filed September 3, 1925. F. D. Monckton, clerk. By Paul P. O'Brien, deputy clerk.

United States Circuit Court of Appeals for the Ninth Circuit

Luther Weedin, as commissioner of immigration at the port of Seattle, Washington, appellant, *vs.* Chin Bow, appellee. No. 4442

CERTIFICATE OF CLERK, UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Frank D. Monckton, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing thirty-seven (37) pages, numbered from and including 1 to and including 37, to be a full, true, and correct copy of the entire record, excluding original exhibit, of the above-entitled cause in the said Circuit Court of Appeals, made pursuant to telegraphic application of the Solicitor General of the United States of America, and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 26th day of September, A. D. 1925.

F. D. MONCKTON, *Clerk.*
By PAUL P. O'BRIEN,
Deputy Clerk.

Supreme Court of the United States

ORDER ALLOWING CERTIORARI

Filed December 7, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.